

A. G. Contract No. KR93 2463TRN  
Scottsdale IGA No. 930128  
ECS File: JPA 94-45  
JPA No.: 93-145  
Project: M-502-4(1)  
Fund: SS249 01C  
Section: Cactus Road, 60th Street  
to Scottsdale Road

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 23 November, 1993,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF SCOTTSDALE, acting by and through its MAYOR and CITY  
COUNCIL ("City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 48-572 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf  
of the City.

3. Congress has authorized appropriations for, but not  
limited to, the construction of streets and primary, feeder and  
farm-to-market roads; the replacement of bridges; the  
elimination of roadside obstacles; and the application of  
pavement markings.

4. Such project within the boundary of the City has been  
selected by the City; the field survey of the project has been  
completed; and the plans, estimates and specifications have  
been prepared and, as required, submitted to the Federal  
Highway Administration ("FHWA") for approval.

NO. <u>18232</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>11/23/93</u>
<u>Richard Hahn</u> Secretary of State
By <u>Dicky D. Greenwood</u>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement and the estimated cost are as follows: WIDEN, DRAINAGE AND SIGNAL IMPROVEMENTS.

Estimated Total Project Cost (incl. 15% CE cost)	\$3,784,551.00
Federal Aid Funds	\$2,532,810.00
City Funds	\$1,251,741.00
Two percent surcharge	\$ 65,783.00
Total City Of Scottsdale Funds	\$1,317,524.00*

\* This includes a two percent (2%) surcharge per ADOT Local Government Engineer memo of October 1991.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said contract or in this agreement and will request the maximum federal funds available.

b. The State will furnish City with a copy of the proposed Project Agreement to be entered into by the State and FHWA, and any Railroad Company Agreement necessary for the full completion of this project. Upon approval of the terms and conditions of the Project Agreement and any State-Railroad Company Agreement by the City, the agreements shall be incorporated in and made a part of this agreement by reference and shall have the same force and effect as though fully written herein. Further, the City is bound by all the terms of any State-Railroad Company Agreement and will reimburse the State for the amount contracted for by and between the Railroad Company and the State acting as agent for the City.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of City's deposit unless and until so authorized in writing by the City.

2. Prior to the solicitation of bids, the City shall deposit with State funds in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the City any part of the funds deposited by City remaining after City's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

6. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The City shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Scottsdale  
City Manager  
3939 Civic Center Blvd.  
Scottsdale, AZ 85251

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

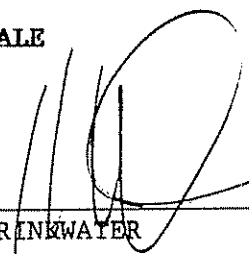
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

City OF SCOTTSDALE

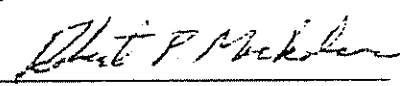
STATE OF ARIZONA

Department of Transportation

By

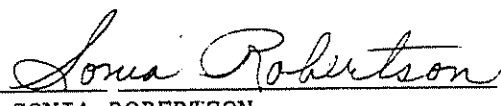
  
HERBERT R. DRINKWATER  
Mayor

By

  
ROBERT P. MICKELSON  
Deputy State Engineer

ATTEST

By

  
SONIA ROBERTSON  
City Clerk

RESOLUTION NO. 3913

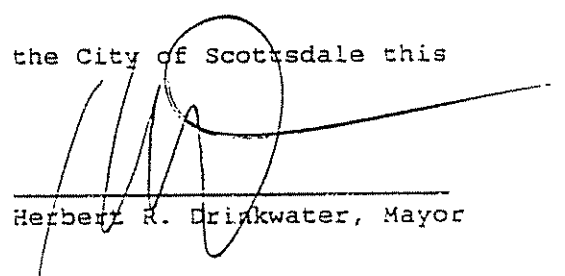
A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION.

WHEREAS, the City of Scottsdale is desirous of entering into an intergovernmental Agreement with the State of Arizona for the purpose of widening Cactus Road between 60th Street and Scottsdale Road.

WHEREAS, the City of Scottsdale is authorized pursuant to Arizona Revised Statutes and City charter to enter into Intergovernmental Agreements and to provide funds for Capital Improvement Projects.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Scottsdale, Arizona that the Mayor is authorized to execute the attached Agreement on behalf of the City of Scottsdale, and Richard A. Bowers, City Manager or his designee, is the City's authorized administrator of this Agreement.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 1st day of November, 1993.

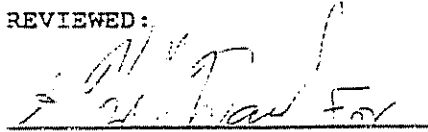
  
Herbert R. Drinkwater, Mayor

ATTEST:

Sonia Robertson, City Clerk

By 

REVIEWED:

  
Richard Garnett,  
City Attorney

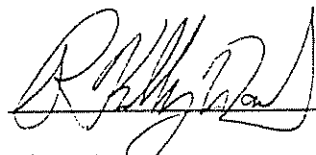
JPA 93-145

COS #930128

APPROVAL OF THE CITY OF SCOTTSDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF SCOTTSDALE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 6<sup>th</sup> day of October, 1993.

  
For Richard W. Garnett III  
City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR93-2463-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 19<sup>th</sup> day of November, 1993.

GRANT WOODS  
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath".

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
8290G